

COMMENT

Paragraph (a) of this Rule makes it clear that the procedures set forth in the Rule apply to all cases where children are taken into custody. Paragraphs (b) and (c) implement D.C. Code § 16-2311(b). Paragraph (d) provides for notice to the parent, guardian, or custodian by the Director of Social Services or the Director's delegate in addition to the notice by the person taking the respondent into custody required under D.C. Code § 16-2311(a). Paragraph (e) is designed to prevent interviews of a respondent in detention by the police and others, about the offense for which the respondent is in custody

without the presence or consent of the respondent's parent, guardian, custodian, or attorney. Subparagraph (e)(2) permits a law enforcement officer to interview a respondent, with the respondent's consent, about an offense committed in or on route to or from the detention facility and with which the respondent has not been charged. Statements obtained pursuant to subparagraph (e)(2) are not admissible, except for impeachment, at any proceeding brought against the respondent. See *Harris v. New York*, 401 U.S. 222, 91 S. Ct. 643, 28 L. Ed. 2d 1 (1971).

D.C. Law Review. — For symposium, "The Unnecessary Detention of Children in the District of Columbia — Pre-initial hearing detention: Are the Police Department and Social Services intake following the law?", see 3 D.C. L. Rev. 193 (1995).

Juvenile has a due process right to a fair trial, including a speedy one, consistent with the statutory purpose of the juvenile code, but consonant with the goals of protection of the child and the community. In re D.H., App. D.C., 666 A.2d 462 (1995).

Rule inapplicable when juvenile arrested as an adult. — Because juvenile was arrested for murder as an adult pursuant to a valid arrest warrant, and jurisdiction was transferred to the Criminal Division at the time juvenile gave his custodial statement, Superior Court Juvenile Rule 105 was not applicable; thus, detective was free to interview him. In re D.H., App. D.C., 666 A.2d 462 (1995).

Rule 106. Criteria for detention and shelter care.

(a) *Detention.* No respondent shall be placed in detention prior to a factfinding hearing or a dispositional hearing unless the respondent is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required to protect the person or property of others or of the respondent, or to secure the respondent's presence at the next court hearing.

(1) In determining whether detention is necessary to protect the person of others, relevant factors include but are not limited to the following:

- (i) Record of the respondent's previous offenses against persons,
- (ii) Record of the respondent's previous weapons offenses,
- (iii) Nature and circumstances of the pending charge,
- (iv) Nature and circumstances of other pending charges, if they involve an offense against the person or a weapons offense,
- (v) Allegations of danger or threats to witnesses, and
- (vi) Emotional character and mental condition of the respondent.

(2) In determining whether detention is necessary to protect the property of others from serious loss or damage, relevant factors include but are not limited to the following:

- (i) Record of the respondent's previous offenses against the property of others, if serious loss or damage was involved,
- (ii) Nature and circumstances of the pending charge, and
- (iii) Nature and circumstances of other pending charges, if they involve serious loss or damage to the property of others.

(3) In determining the respondent's own presence

- (i) Narcotics use,
- (ii) Abuse of
- (iii) Suicidal
- (iv) Other serious

to the respondent

(4) In determining the respondent's presence

limited to the following

- (i) The respondent
- (ii) Length of
- (iii) Employment
- (iv) Record of

circumstances surrounding

(v) Record of official custody,

(vi) Record of surrounding such and

(vii) Seriousness of non-appearance

(5) If detention graphs (a)(1), (2) decision may necessitate

(6) No respondent while armed, at commit any such abscondence from detention decision

(7) No respondent be admitted to a it appears from a protect the respondent (a)(3) of this Rule

(b) *Shelter care* supervision shall dispositional hearing shelter care is required respondent has agency able to respondent appears

(1) In determining the respondent,

(i) Abusive or members of the family

(3) In determining whether detention is necessary to protect the respondent's own person, relevant factors include but are not limited to the following:

- (i) Narcotics addiction by the respondent or other indication of illegal drug use,
- (ii) Abuse of alcohol by the respondent,
- (iii) Suicidal actions or tendencies of the respondent, and
- (iv) Other seriously self-destructive behavior creating an imminent danger to the respondent's life or health.

(4) In determining whether detention is necessary to secure the respondent's presence at the next court hearing, relevant factors include but are not limited to the following:

- (i) The respondent's residence in the District of Columbia,
- (ii) Length of the respondent's residence and present community ties,
- (iii) Employment and school record of the respondent,
- (iv) Record of the respondent's appearances at prior court hearings and circumstances surrounding non-appearances, if any,
- (v) Record of the respondent's previous abscondences from institutions or official custody, and circumstances surrounding such abscondences,
- (vi) Record of respondent's abscondences from home, and circumstances surrounding such abscondences and the respondent's eventual return home, and
- (vii) Seriousness of the pending charge and its likelihood of inducing non-appearance.

(5) If detention appears to be justified under the factors listed in subparagraphs (a)(1), (2), (3), or (4) of this Rule, the person making the detention decision may nevertheless consider whether the respondent's living arrangements and degree of supervision might justify release pending adjudication.

(6) No respondent who is charged with homicide, forcible rape, robbery while armed, attempt to commit any such offense, assault with intent to commit any such offense, or burglary in the first degree, or who is in abscondence from Court-ordered secure custody shall be released prior to a detention decision by a judicial officer of the Division.

(7) No respondent charged with being a person in need of supervision shall be admitted to a detention facility, except upon order of a judicial officer, unless it appears from available information that immediate detention is necessary to protect the respondent's own person under the criteria listed in subparagraph (a)(3) of this Rule.

(b) *Shelter care.* No respondent who is alleged to be delinquent or in need of supervision shall be placed in shelter care prior to a factfinding hearing or a dispositional hearing, unless it appears from available information that shelter care is required to protect the person of the respondent, or because the respondent has no suitable parent, guardian, custodian, or other person or agency able to provide supervision and care for the respondent and the respondent appears unable to care for himself or herself.

(1) In determining whether shelter care is necessary to protect the person of the respondent, relevant factors include but are not limited to the following:

- (i) Abusive or threatening conduct toward the respondent by a member or members of the family or household,

- (3) No respondent who is judged to be in need of shelter care under D.C. Code § 16-2310(b) and the provisions of this Rule shall be placed in detention, unless the respondent's detention is independently justified under paragraph (a) of this Rule. (Amended June 26, 1995, eff. Aug. 1, 1995.)

This Rule is adopted pursuant to the statutory direction in D.C. Code § 16-2310(c).

For symposium, "The Unnecessary Detention

Probable cause finding prerequisite to detention order. — A finding of probable cause to believe that the allegations in the delinquency petition are true is a prerequisite

(c) *Application for*
a respondent upon
any time amend the
release, or order that
gives prompt notice
who has been placed
pursuant to D.C. Code

to a valid order of detention. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Criminal Rule's principles applicable to detention proceedings. — The Superior Court's Juvenile Rules do not include a counterpart to SCR-Criminal 5(d)(1), although the general principles thereof are applicable to both types of proceedings. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Adult preliminary examination's issues and procedures same for juvenile hearing. — While the purpose of a preliminary examination in a case involving an adult in the Criminal Division (i.e., whether there is probable cause to believe that an offense has been committed and that the defendant has committed it, so that the Court may forthwith hold him to answer in the Court having jurisdiction) is somewhat different from the purpose of a probable cause hearing in a case involving a juvenile (i.e., whether the respondent validly may be detained), the issue and procedures are the same. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Delinquency respondent has same rights in probable cause hearing as adult alleged offender does in a preliminary examination, i.e., to cross-examine government witnesses and introduce evidence on his own behalf on the question of probable cause. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

But no right to determine government's witnesses. — A delinquency respondent's right to present evidence and be heard does not connote the right to determine in effect who the

government's witnesses shall be. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Probable cause determination for detention subject to interlocutory review. — A Family Division's probable cause determination for detaining a juvenile pending a factfinding hearing is subject to review in an interlocutory appeal. In re R.D.S., App. D.C., 359 A.2d 136 (1976).

Where detention required to protect others, judge must articulate reasons. — A juvenile court judge is required to articulate his reasons for ordering detention if he finds that the child's detention is required to protect the person of others. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

And order "to protect person of others" not sufficient. — A detention order "to protect the person of others" based solely on "the nature and circumstances of the pending charge" standing alone would not constitute sufficient grounds for detention. In re M.L. DeJ., App. D.C., 310 A.2d 834 (1973).

Proceedings not barred by prior detention. — Proceedings in Family Court by the District against a juvenile were not barred where the United States had previously charged defendant and detained him for 95 days but dismissed charges following the failure of the grand jury to indict. In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Cited in In re L.J., App. D.C., 546 A.2d 429 (1988); In re O.M., 117 WLR 1253 (Super. Ct. 1989); In re S.J., App. D.C., 686 A.2d 1024 (1996).

Rule 107. Detention or shelter care hearing.

(a) *Presence of parent, guardian, or custodian.* The detention hearing may be held without the presence of the respondent's parent, guardian, or custodian. However, upon request of the respondent's attorney for good cause shown, the Division may postpone the hearing because of the absence of a parent, guardian, or custodian.

(b) *Order of proceedings.* The judicial officer may admit any testimony and other evidence relevant to the necessity for detaining the respondent, whether or not such evidence would be admissible at a factfinding hearing, provided that any written reports or social records made available to the judicial officer at the hearing shall be made available to the Corporation Counsel and to counsel for the respondent at the hearing. At the conclusion of the hearing, the judicial officer shall set a date for the next hearing, and counsel for the respondent shall be furnished with a copy of the judicial officer's detention order, with reasons set forth therein.

(c) *Application for reconsideration.* A judicial officer ordering the release of a respondent upon conditions specified in D.C. Code § 16-2312(d)(2) may at any time amend the order to impose additional or different conditions of release, or order that the respondent be detained, provided the judicial officer gives prompt notice of such action to counsel for the respondent. A respondent who has been placed in detention, shelter care, or released under conditions pursuant to D.C. Code § 16-2312, or the Corporation Counsel, may, at any

10/26/01

**Diversion Eligibility Criteria and Current Diversion
Programs Utilized by the DC Superior Court Social
Services Division**

PINS/Truancy Cases:

The Superior Court will maintain a six- (6) month Diversion Program for PINS and truancy cases. In this program, each child and his or her family will receive an assessment and an individualized service plan will be developed. Protective factors as well as risk factors will be addressed for each family and services will be offered such as educational advocacy, tutoring, family group and individual counseling, therapeutic recreational activities, intensive retreats, life education groups, support groups, self-esteem building, crisis intervention, including a 24-hour crisis telephone line and respite care.

If a child is arrested on probable cause of being a PINS, or parent/guardian complains about a child and it appears from the complaints that a child is probably a PINS, the Corporation Counsel will decline prosecution of such a child upon the recommendation of the Social Services Division, where the child and his/her family agree to participate in the appropriate Diversion Program.

The DC Public School forwards referrals to the DC Superior Court for services. Truants who are first time offenders who are picked up by the Metropolitan Police and taken to the PENN or Douglas Attendance Centers are referred to the Youth Court Program. Habitual truants (truants who have missed in excess of (15 days) are assessed and referred to the Court diversion program.

A PINS or Truancy matter is only considered for immediate papering if the child is deemed a danger to himself or others.

Delinquency cases:

A young person arrested for an eligible delinquency charge that meets the age criteria, resides within the supervision area and has no prior adjudication can be placed in a diversion program at the initial phase of the case with the recommendation of Court Social Services and approval by Office of the Corporation Counsel. Some of the delinquency charges that are eligible for diversion are as follows:

Driving without Permit (no accident, personal injury or flight from police)
Driving in Excess of Posted Limit
Reckless Driving
UUV Passenger
Failure to Pay Metro Fare
Unlawful Conduct
Possession of a BB Gun, Air Rifle, Pellet Gun
Disorderly Conduct
Gambling Offense
Drinking in Public
UUV (no involvement in chase with chase with MPD, no collision, no evidence that the respondent stole the car, and no evidence of carjacking)
Drug Sales and Possession With Intent to Distribute (no weapon involved etc.)
Threats and Simple Assault (no evidence of obstruction of justice, no evidence of a pattern of domestic violence, no physical injury to the complainant)
Unlawful entry

Social Factors:

The child cannot have chronic or serious emotional/mental illness, which impedes functioning.

There is an existing family structure that can, with minimal assistance, effectively cope with issues confronting youth.

The child's parents, guardian or custodian are willing to participate in the program. The diversion programs are voluntary so the respondent must be willing to participate in the program on a voluntary basis as well.

Disposition of Diversion Cases:

When a child has completed a Diversion Program, a termination report is provided to the Juvenile Intake Office by the program. An unsuccessful delinquency case must be presented to the Office of the Corporation Counsel for papering consideration prior to the end of the six-month diversion period.

An unsuccessful truancy case can be presented to Corporation Counsel for papering after completion of a complaint by a representative of the Social Services Division with more than 20 documented days of truancy. A PINS matter can be presented for papering consideration with a documented history of absences from the given address.

Consortium for Youth Alternatives (CYA):

This program is budgeted by the Court with a limited number of slots (132) which is a 33% reduction of the slots from two years ago. It is one of the two programs used to

divert delinquency clients. It is also utilized as our primary treatment resource for PENS and truants either referred directly by the police, community agencies, the school system or as walk-in or phone-in cases to our office. This program provides individual, family and group counseling, educational advocacy, therapeutic recreational activities, parent education and support groups, and respite care.

Field Unit Diversion:

The probation officers of the Juvenile Supervision Branch serve as an overflow diversion component when the CYA Program reaches its allotted slots for the fiscal year. Overflow procedures were utilized in 2000 and 2001 when the CYA Program reached its capacity prior to the end of the fiscal year. The probation officers utilize contractual services, community resources and other Social Services Division resources to provide services to this population.

Youth Court:

This is a Court funded program. This program is another one of our diversion programs for delinquency youth. It is also available to clients placed on Consent Decree and to youth, meeting the program criteria whose case is no papered. A new element of the Youth Diversion program is providing services to non-habitual truants who are picked up by Metropolitan Police Officers during school hours and transported to either the PENN or Douglas Student Attendance Centers. Youth Court jurors question a respondent about what led to their arrest and what activities and situations may have contributed to the problem. Once satisfied that they have all of the information critical to a fair and reasonable decision, jurors render a sentence that must be completed within 90 days of the hearing. Each Youth Court sentence must include community service and participation in the program as a peer juror. Other sanctions are given such as letters of apology to the complainant (s) and or family members. After completion of the sentence, the client may be eligible for a refurbished computer or other available incentive.